

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF REGULATIONS FOR VOLUNTARY ACCELERATED LIGHT-DUTY VEHICLE RETIREMENT ENTERPRISES

The Air Resources Board (the "Board" or "ARB") will conduct a public hearing at the time and place noted below to consider the adoption of regulations governing the implementation of voluntary accelerated light-duty vehicle retirement enterprises.

DATE: December 10, 1998

TIME: 8:30 a.m.

PLACE: Air Resources Board
Board Hearing Room, Lower Level
2020 L Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 8:30 a.m., December 10, 1998, and will continue at 8:30 a.m., December 11, 1998. This item may not be considered until December 11, 1998. Please consult the agenda for the meeting, which will be available at least 10 days before December 10, 1998, to determine the day on which this item will be considered.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact ARB's Clerk of the Board at (916) 322-5594, or the Telecommunications Device for the Deaf (TDD) at (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area by November 25, 1998.

INFORMATIVE DIGEST OF PROPOSED ACTION/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Proposed Actions and Sections Affected:

Adopt the following chapter and sections of Title 13, California Code of Regulations, and the documents incorporated by reference therein: Chapter 13, Voluntary Accelerated Vehicle Retirement Enterprises; Article 1, Voluntary Accelerated Light-Duty Vehicle Retirement Enterprises; Sections 2600 - 2610, and the incorporated "Voluntary Accelerated Vehicle Retirement Program Emission Reductions" and "Voluntary Accelerated Vehicle Retirement Certificate of Functional and Equipment Eligibility Inspection Form."

Summary of Proposed Action

In 1994, the ARB approved the State Implementation Plan (SIP) for Ozone. Under the Clean Air Act, states are required to produce a SIP to ensure attainment of the health-based federal one-hour ozone standard by specified deadlines. California's SIP contains measure M1 (the M1 program), which calls for the voluntary accelerated retirement of large numbers of older, higher-emitting vehicles in the South Coast Air Basin (SCAB) from 1999 through 2010. The SIP commits the M1 program to achieving a 25 ton per day reduction in emissions of reactive organic gases and oxides of nitrogen in 2010.

Senate Bill 501 (SB 501), signed by Governor Wilson in 1995, added sections 44100 et seq., Article 10, to the California Health and Safety Code. These sections require the ARB to adopt regulations governing the implementation of market-based, privately operated voluntary accelerated vehicle retirement (VAVR) enterprises. Assembly Bill 208, signed by Governor Wilson in late 1997, amended section 44101 of the Health and Safety Code to extend the deadline for the adoption of the regulations to December 31, 1998, from the June 30, 1997, deadline in SB 501. SB 501 requires the regulations to serve two purposes: 1) to provide the protocols for the implementation of the M1 program in the SCAB; and 2) to provide the protocols for the implementation of other VAVR enterprises throughout California. Local air pollution control and air quality management districts (districts) that authorize mobile source emission reduction credit generation and use from VAVR enterprises would be required to use the proposed regulations, once adopted, for implementing such programs. The implementation of VAVR enterprises is discretionary; it is not mandatory. Districts that choose not to authorize the implementation of VAVR enterprises would not be required to have such programs.

The M1 program is unfunded at this time. Without adequate funding, the M1 program cannot achieve the M1 emission reduction commitments called for in the 1994 SIP. However, these funding constraints will not affect the implementation of district VAVR programs operating throughout California, including those in the SCAB.

The provisions in this proposed action are designed to ensure that reductions resulting from voluntary accelerated vehicle retirement meet the following basic criteria necessary to qualify for use as mobile source emission reduction credits: 1) the reductions are not required by law, regulation, or otherwise assumed to occur as part of a regional air quality plan, i.e., the reductions are surplus; 2) the reductions must be real, permanent, and quantifiable to an acceptable degree of certainty; and 3) the life of the reductions must be reasonably established and commensurate with the proposed use of the credits. In addition, the proposed action includes provisions to allow car collectors and other members of the public access to vehicles of interest, as required by SB 501.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The ARB has determined that it is not feasible to draft the regulations in plain English due to the technical nature of the regulations; however, a plain English summary of the proposed regulations is available from the agency contact person named in this notice, and/or is also contained in the Staff Report for this regulatory action.

The Board staff has prepared a Staff Report entitled "Proposed Regulations for Voluntary Accelerated Light-Duty Vehicle Retirement Enterprises" that includes the initial statement of reasons for the proposed action and a summary of the environmental impacts of the proposal, if any. Copies of the Staff Report and the full text of the proposed regulatory language may be obtained from the Board's Public Information Office, 2020 L Street, Sacramento, California, 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing. In addition, the Board staff has compiled a record which includes all information upon which the proposal is based. This material is available for inspection upon request to the contact person identified below. Copies of the documents may also be obtained from the Public Information Office at the address above.

To obtain this document in an alternative format, please contact the ARB's Americans with Disabilities Act Coordinator at (916) 322-4505, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

Inquiries regarding this matter should be directed to Ms. Krista Fregoso, Air Pollution Specialist, Regulatory Strategy Section, Mobile Source Control Division, at (916) 445-5035, or to Mr. Bill Lovelace, Manager, Regulatory Strategy Section, Mobile Source Control Division, at (916) 327-7214.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulations are presented below.

The Executive Officer has determined that except for the local air pollution control districts and air quality management districts (districts), the proposed regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other non discretionary savings to local agencies.

The ARB's Executive Officer has determined that the proposed regulatory action will impose a mandate upon and create costs to districts with VAVR enterprises in their jurisdictions. However, the mandate does not require State reimbursement to the districts pursuant to Government Code section 17500 et seq. and section 6 of Article XIII B of the California Constitution because the districts have the authority to levy fees and obtain funds sufficient to pay for the mandated Program (Health and Safety Code sections 42311, 40510, and 44104). The costs to the districts to implement the proposed regulatory action are approximately \$15,000 annually for each district with VAVR enterprises.

The proposed regulatory action places the responsibility for implementing VAVR enterprises with the local air quality management and air pollution control districts. However,

their implementation is voluntary, not mandatory. Therefore, the adoption of the proposed regulations for VAVR enterprises would not create costs for any state agency, local agency, or school district, other than for those air quality management or air pollution control districts that choose to allow VAVR enterprises within their respective jurisdictions.

For those that do, any incremental costs associated with the implementation of the proposed regulations will not be significant because those districts most likely already allow the operation of VAVR enterprises and have accounted for most of the associated administrative costs in their budgets. The staff estimates annual incremental costs due to the reconciliation of current district rules with the ARB's regulations, once adopted, to be approximately \$15,000 per district. This estimate is based on vehicle retirement rates currently taking place in the South Coast Air Quality Management District, the district with highest levels of vehicle retirement. It is anticipated that districts with significantly lower vehicle retirement rates will incur lower incremental costs. Districts that incur costs as a result of implementing VAVR enterprises may recover all or part of these costs by charging application and administrative fees to the individual VAVR enterprise operators, or by increasing fees to permit holders.

The Executive Officer has also determined that there will be an insignificant potential cost impact, as defined in Government Code section 11346.5(a)(9), on private persons or businesses directly affected resulting from the proposed action.

Participation as a VAVR enterprise operator is voluntary for licensed auto dismantlers and other entities eligible to conduct VAVR enterprises. An eligible entity's decision to conduct a VAVR enterprise will be based on that entity's specific business and financial situation and the prevailing market-forces (cost of purchasing eligible vehicles, the demand for credits, etc.). It is unlikely that an eligible entity will conduct a VAVR enterprise unless it is deemed profitable.

It is possible, however, that the adoption of this regulatory proposal could affect operations of existing VAVR programs throughout California. As this proposal is more stringent than the district rules currently governing VAVR programs, there could be a slight negative economic impact for those VAVR enterprise operators already in existence. The staff estimates that existing VAVR enterprise operators may incur additional costs of \$20.00 - \$25.00 for each vehicle submitted for retirement. The staff expects that VAVR enterprise operators may recover these costs by adjusting the purchase price of vehicles eligible for retirement.

The ARB's Executive Officer has determined, pursuant to Government Code section 11346.5(a)(3)(B), that the proposed regulations will affect small business. As discussed above, this proposal is more stringent than the district rules currently governing VAVR programs. As a result, there could be a slight negative economic impact for those VAVR enterprise operators already in existence. The staff estimates that existing VAVR enterprise operators may incur additional costs of \$20.00 - \$25.00 for each vehicle submitted for retirement. In addition, small businesses that hold permits in affected districts may have to pay slightly higher permit fees, if the districts elect to recoup these small increases from permit fees.

In developing the proposal, the staff has determined there is a potential cost impact on private persons or businesses directly affected by the regulation. The Executive Officer has also determined that the proposed regulations may have a significant, adverse economic impact on some businesses operating with little or no margin of profitability, including the ability of California businesses to compete with businesses in other states, based on an assessment of the evidence available in the record.

Accordingly, the following information is provided pursuant to Government Code section 11346.5(a)(7):

(A) Identification of the types of businesses that would be affected.

Businesses that are eligible to conduct VAVR enterprises, which are auto dismantlers licensed according to the requirements of the California Vehicle Code, applicable business codes, and the California Department of Motor Vehicles, or are business operators with binding agreements with licensed auto dismantlers, and businesses that hold permits in the affected districts will be affected by the proposed regulations. Businesses that are operating with little or no margin of profitability may experience significant adverse impacts resulting from the proposed regulations.

(B) Description of the projected reporting, record keeping, and other compliance requirements that would result from the proposed action.

To comply with the proposed regulations, VAVR enterprises will be responsible for maintaining and storing all appropriate records, as contained in the proposed regulations, for a minimum period of three years. The records shall include, but are not limited to, all vehicle-specific information for each vehicle retired in accordance with the proposed regulations, all copies of vehicle acquisition documents required by the California Department of Motor Vehicles, and the dates of vehicle purchase and subsequent retirement. Additionally, VAVR enterprises operators will be required to provide the appropriate records to the district in an electronic format to be specified by the district. For information that cannot be provided electronically, the VAVR enterprise operator shall provide the district with hard copies.

(C) The ARB staff finds that the proposed regulations may have a significant adverse economic impact on businesses operating with little or no margin of profitability, including the ability of California businesses to compete with businesses in other states. The ARB staff has considered proposed alternatives that would lessen any adverse economic impact on businesses and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses.

- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

Submissions may also include the following considerations which more closely apply to these amendments:

- (v) Any other alternative that would lessen any adverse impact of the proposed regulations.

In accordance with Government Code section 11346.3, the Executive Officer has determined that for businesses operating with little or no margin of profitability, the proposed regulatory action may affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within California, or the expansion of businesses currently doing business within California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

Before taking final action on the proposed regulatory action, the Board must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The staff has designed the proposed regulations to allow the maximum amount of flexibility for VAVR enterprises while guaranteeing that the emission reduction credits generated meet all applicable requirements.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing. To be considered by the Board, written submissions must be addressed to and received by the Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, California, 95812, no later than 12:00 noon on December 9, 1998, or received by the Clerk of the Board at the meeting.

The Board requests, but does not require, that 20 copies of any written comments be submitted and that all written statements be filed at least 10 days prior to the hearing. The Board encourages members of the public to bring to the attention of the staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND HEARING PROCEDURES

This regulatory action is proposed under that authority granted in California Health and Safety Code sections 39600, 39601, 44100, 44101, 44102, 44103, 44104, 44104.5, 44105, 44106, 44107, 44109, 44115, 44120, 44121, and 44122. This action is proposed to implement, interpret and make specific California Health and Safety Code sections 44100 et seq., 39002, 39003, 43000, 43013, Health and Safety Code, and California Vehicle Code sections 4604, 4604.2, and 4604.5.

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In such an event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted. The public may request a copy of the modified regulatory text from the Board's Public Information Office, 2020 L Street, Sacramento, California, 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Michael P. Kenny
Executive Officer

Date: October 13, 1998